

# **TAB E**

Barry A. Freid

03/08/2005

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UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS  
No. 04CV12333MEL

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CASAS, BENJAMIN & WHITE, LLC.,  
Plaintiff,

vs.

THE POINTE GROUP, INC., GERALD S. FREID; BARRY  
FREID; KEY CORPORATE CAPITAL, INC.,  
Defendants.

-----  
DEPOSITION OF BARRY A. FREID  
March 8, 2005 - 10:15 a.m.

Conn, Kavanaugh, Rosenthal, Peisch & Ford  
10 Post Office Square  
Boston, Massachusetts

Reporter: Donna J. Whitcomb, CSR/RPR/RMR

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## 1 APPEARANCES:

2  
3 CONN, KAVANAUGH, ROSENTHAL, PEISCH & FORD  
4 By Erin K. Higgins, Esquire  
5 10 Post Office Square  
6 Boston, Massachusetts 02109  
7 (617) 482-8200  
8 On behalf of the Plaintiff.  
9  
10 GORDON HALEY, LLP  
11 By Stephen F. Gordon, Esquire  
12 101 Federal Street  
13 Boston, Massachusetts 02110  
14 (617) 261-0100  
15 On behalf of The Pointe Group, Inc.  
16  
17 NIXON PEABODY, LLP  
18 By W. Scott O'Connell, Esquire  
19 100 Summer Street  
20 Boston, Massachusetts 02110  
21 (617) 345-1000  
22 On behalf of Key Corporate Capital, Inc.  
23  
24 ALSO PRESENT: Gerald Freid

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2 EXAMINATION OF: PAGE  
3 BARRY FREID  
4 By Ms. Higgins 5, 237  
5 By Mr. O'Connell 188  
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## 7 EXHIBITS

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11 2 Profile, The Pointe Group, Inc., 2003 29  
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13 3 Business Card, Barry Freid 32  
14 4 Casas, Benjamin & White, LLC 39  
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16 6 Memorandum 12/2/04, Re: Status Update 77  
17 7 Management Presentation April 2004 87  
18 8 Confidential Information Memorandum 87  
19 9 Non-Binding Expression of Interest 96  
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21 11 Series of E-Mails, Re: Letter of Intent 104  
22 12 Confidential Presentation 104  
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5 16 Fourth Modification and Extension 119  
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7 18 Letter, Barry Freid to CBW 129  
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9 20 Letter, Barry Freid to CBW 141  
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11 Application of Sale Proceeds  
12 22 E-Mail, Caine to B. Freid 6/4/04 146  
13 Re: CBW Follow Up  
14 23 Confirmation Letter Limited Modification 150  
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16 25 Limited Modification to 6/3/04 167  
17 Letter Agreement  
18 26 E-Mail, Gordon to E. Casas 154  
19 27 E-Mail 7/15/04, Re: TPG Request 154  
20 28 Confirmation Letter Limited Modification 175  
21 29 Epoch/TPG Closing Statement 227  
22 30 Obligations Modification 232  
23 31 E-Mail, Re: Epoch/TPG 234  
24 \*Original exhibits retained by Ms. Higgins.

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## 1 PROCEEDINGS

2 MS. HIGGINS: Since this is the first  
3 deposition in the case, should we put something on  
4 the record?  
5 MR. GORDON: Yes.  
6 MS. HIGGINS: Then let the record  
7 reflect that at this deposition and at all other  
8 depositions in this case counsel have agreed that  
9 all objections except as to the form of the question  
10 will be reserved until the time of trial as well as  
11 all motions to strike. I assume that Mr. Freid  
12 would like to read and sign?  
13 MR. GORDON: Yes, before any notary.  
14 MS. HIGGINS: We'll waive the notary  
15 requirement and 30 days to read and sign but,  
16 obviously, Steve, if you need more time just let me  
17 know. Anything else anyone want to say?  
18 MR. O'CONNELL: I agree with what  
19 you've indicated.  
20 BARRY A. FREID, after having been  
21 satisfactorily identified was duly sworn by the  
22 Notary Public and testified as follows in  
23 answer to direct interrogatories by Ms. Higgins:  
24 Q. Sir, could you state your full name

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|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: right;">Page 174</p> <p>1 Q. And this July 22nd letter has a purchase<br/>2 price, if you look on the first page, of 32,650,000,<br/>3 correct?<br/>4 A. Right.<br/>5 Q. Now, between the time of this letter and<br/>6 the time of the closing were there any other issues<br/>7 that arose that affected the purchase price other<br/>8 than this abutter issue and the service of the grand<br/>9 jury subpoena that you recall?<br/>10 A. Yeah, I recall -- I recall there was a<br/>11 lien against -- I think there were a couple of liens<br/>12 that had to be paid.<br/>13 Q. Were those issues that came up between the<br/>14 time that this July 22nd letter was signed and the<br/>15 closing?<br/>16 A. I think so.<br/>17 Q. What were the liens?<br/>18 A. There was a mechanic's lien from<br/>19 construction costs; there was -- I think that there<br/>20 was -- there might have been liens from some of the<br/>21 utility companies; there were -- we were having<br/>22 problems with an Otis elevator, for example. We had<br/>23 a legal case going. There were some Workmen's<br/>24 Compensation cases that were current; there was some</p> | <p style="text-align: right;">Page 176</p> <p>1 statement?<br/>2 A. Yeah.<br/>3 Q. And you said you went to the closing at<br/>4 Goodwin Proctor, correct?<br/>5 A. Yes, I did.<br/>6 Q. And while you were there that day I<br/>7 presume you saw a closing statement?<br/>8 A. Yes, I did.<br/>9 Q. And was that the first time you had seen a<br/>10 closing statement for this transaction?<br/>11 A. Yes.<br/>12 Q. So you hadn't seen any drafts in the days<br/>13 leading up to the closing?<br/>14 A. Not really. I mean, I -- I probably did.<br/>15 I mean, there was -- there was many of them. You<br/>16 know, I started to just not look so close at stuff.<br/>17 Q. To the extent that the purchase price that<br/>18 Epoch had agreed to went down from what we saw in<br/>19 that July 22nd letter, the 32,000,000 plus number,<br/>20 to the extent that number went down, were you<br/>21 involved in discussions as to whether any new<br/>22 purchase price was acceptable to The Pointe Group?<br/>23 A. To the best of my recollection we were<br/>24 just trying to come up with as little money as</p>                                                                                                          |
| <p style="text-align: right;">Page 175</p> <p>1 claims that were current. You know, all this stuff<br/>2 started to come up all of a sudden when you're going<br/>3 to go to a closing and your attorney says, well,<br/>4 what's this, what's that; so we faced them as<br/>5 necessary.<br/>6 (Document marked as Exhibit No. 28<br/>7 for identification.)<br/>8 BY MS. HIGGINS:<br/>9 Q. Mr. Freid, my only question about this<br/>10 document is whether that you recall there was a<br/>11 final set of modifications to this, to the original<br/>12 June 3rd, 2004 letter agreement which is referenced<br/>13 in the first paragraph of this September 27th<br/>14 letter?<br/>15 A. Right.<br/>16 Q. Do you remember that you received this<br/>17 September 27th letter from Steve Dunham constituting<br/>18 this Fourth Modification to the June 3rd letter?<br/>19 A. Probably.<br/>20 Q. As the closing was approaching did you<br/>21 review any drafts of closing statements, attachments<br/>22 to closing statements?<br/>23 A. No.<br/>24 Q. Do you know what I mean by a closing</p>                                                                                     | <p style="text-align: right;">Page 177</p> <p>1 possible to get this -- to get the closing done.<br/>2 Q. Meaning The Pointe Group?<br/>3 A. No, meaning my family: Meaning my mother,<br/>4 my brother, and my two sisters and myself. To the<br/>5 best of my recollection we were just trying to come<br/>6 up with as little money at the closing as possible.<br/>7 Q. And the day you went to the closing did<br/>8 your family bring money to the closing?<br/>9 A. I believe so.<br/>10 Q. Do you remember how much?<br/>11 A. I think it was a little bit over 200,000.<br/>12 Q. And at any point prior to the day of the<br/>13 actual closing were you ever told that your family<br/>14 would have to bring more than that to the closing?<br/>15 A. Not that I remember.<br/>16 Q. When you went to the closing at Goodwin<br/>17 Proctor it was on September 30th, correct?<br/>18 A. I'm pretty sure.<br/>19 Q. Were you expecting that CBW would be paid<br/>20 out of the proceeds of the closing?<br/>21 A. When I went to the close -- when I went to<br/>22 the closing I didn't know what to expect.<br/>23 Q. Do you remember in the days leading up to<br/>24 the closing having discussions with your brother</p> |

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1 about whether CBW's fee would need to be paid out of  
 2 the sale proceeds?  
 3 A. No.  
 4 Q. Did you ever see an invoice submitted by  
 5 CBW in advance of the closing?  
 6 A. No, I didn't.  
 7 Q. When you went to the closing and you --  
 8 did you actually see -- you said you saw a closing  
 9 statement?  
 10 A. Yes, I did.  
 11 Q. Did you make any observation as to what  
 12 that closing statement said about CBW's fee?  
 13 A. I just saw that it was outside of the  
 14 deal.  
 15 Q. How did you know it was outside of the  
 16 deal?  
 17 A. It stated it clearly on the statement.  
 18 Q. And were you surprised to see that?  
 19 A. Pleasantly.  
 20 Q. Did you have any knowledge when you went  
 21 to the closing that morning that such an agreement  
 22 had been reached?  
 23 A. No.  
 24 Q. Do you remember there being any discussion

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1 at the closing, other than obviously discussions  
 2 that were private between you and counsel, but do  
 3 you remember any discussion at the closing as to how  
 4 CBW was going to be paid?  
 5 A. No.  
 6 Q. And just so my question's clear, that  
 7 includes conversations that you weren't a party to  
 8 but conversations that you overheard as well; did  
 9 you ever hear anyone discussing that issue?  
 10 A. All I know is that it was outside of the  
 11 closing statement. It was to be paid outside.  
 12 Q. Do you remember, you know, sometimes this  
 13 happens during a closing, you go down the closing  
 14 statement and sort of talk about each item on the  
 15 closing statement; did that happen at this closing?  
 16 A. Just like it was said, there was three  
 17 initials outside of closing.  
 18 Q. Okay, but my question was whether during  
 19 the closing did the people who were at the closing  
 20 go through each item and kind of check off each one  
 21 as to, okay, this amount is going to be paid, this  
 22 amount's going to be paid?  
 23 A. I believe so. I believe so.  
 24 Q. When you got to CBW --

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1 A. I told you there was three initials there.  
 2 I'm not sure what they were, but to be paid outside  
 3 of the closing.  
 4 Q. Do you remember who discussed or who said,  
 5 well, that's what that means, they're going to be  
 6 paid outside of the closing?  
 7 A. John McCullough.  
 8 Q. And the initials "POC," does that mean  
 9 anything to you?  
 10 A. Yeah, something like -- yes, that's...  
 11 Q. And you remember John McCullough saying  
 12 that they were going to be taken care of outside of  
 13 the closing?  
 14 A. He never said "taken care of"; he didn't  
 15 use that word.  
 16 Q. What did he say?  
 17 A. He said to be handled outside of the  
 18 closing; that's it. He didn't...  
 19 Q. And you don't remember having any  
 20 discussions with any of your family members, with  
 21 anyone other than counsel, in the days leading up to  
 22 the closing concerning how CBW was going to be paid?  
 23 A. Well, the only conversations that I -- you  
 24 know, prior to it, no. Prior to it, no, I didn't

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1 have any conversations.  
 2 Q. Do you remember we saw those -- there was  
 3 the letter that you sent to CBW?  
 4 A. Right.  
 5 Q. Asking if they could compromise their fee,  
 6 right?  
 7 A. Right.  
 8 Q. We saw a later e-mail to CBW again  
 9 requesting that they compromise the fee?  
 10 A. Right.  
 11 Q. And you remember we talked about the fact  
 12 that they agreed to cut \$50,000 off, correct?  
 13 A. Right.  
 14 Q. And so between the time of that  
 15 correspondence and the closing itself you had no  
 16 communications with anyone, leaving aside counsel,  
 17 about how CBW was going to be paid out of this  
 18 transaction when there was no money?  
 19 A. You're right, there was -- there was no  
 20 money. I --  
 21 MR. GORDON: The question is  
 22 conversations.  
 23 A. No, no.  
 24 Q. You had no conversations with anyone about

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